

DETAILED ACTION

Note: The Office Action (OA) mailed on August 24, 2010, erroneously listed a number of claims on the PTOL-326 as allowed claims while rejecting some of these claims in body of the OA. This was an inadvertent error and made the OA confusing and unclear. This OA is intended to correct the above mentioned deficiencies of the last OA.

Election/Restrictions

Applicant's election without traverse of the invention of Group I, claims 127, 128, 130, 132, 133, 140-142, 144-148, 154, 155, 160, 161, 164-166, and 208-210, in the reply filed on March 29, 2010 is acknowledged.

Note: as indicated by the applicant, claim 128 is part of Group I. The examiner inadvertently did not include claim 128 in the invention of Group I.

Claims 172 and 179 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 29, 2010.

Claim Objections

Claim 208 is objected to because of the following informalities: the claim recites a minor typographical error in the term "wherein the selected component provide" in lines 1-2. Correction, such as --wherein the selected component provides-- is suggested.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 127,128,130,132,133,140-142,144-148,154,155,160,161,164-166 and 208-210 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The independent Claim 127 in lines 11-12 recites the term “wherein said means for moving being adapted to perform the movement of the selector device between two positions with a position time smaller than 500 ms.” It is not clear from the claim language whether the recited time is the time it takes to move the selector device between the two positions or if it is the time in which the selector stays in each position. In this Office Action, the recited time is treated to be the time it takes the selector device to move the two components between the desired positions.

Appropriate correction and/or explanation is/are required.

Claim 142 recites the limitation "the information from the sensor" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 154 recites the limitation "the target area" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 160 recites the limitation "the target area" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 208 recites that the selected component emits "a third light." It is not clear from the claim language whether the selected component receives two light beams and in turn generates a third light beam, or if it absorbs only one light beam and provides plurality of separate light beams.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 127, 128, 130, 132, and 147 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tanaka, US Patent No. 4,576,160.

Tanaka discloses a phototherapeutic apparatus comprising:

a means (lens **2** and optical fiber **3**) for receiving a first light beam emitted from a first light source (laser source **1**), the first light beam being emitted along a first beam path (see Fig. 2);

at least two components (plurality of condenser lenses **6-1**, ... **6-i**, ... **6n**);

a selector device (circular plate **10**) comprising the least two components and being movable between at least two positions, each position corresponding to a component being positioned in the first beam path (see Fig. 3); and

a means (the spot regulating mechanism **5**) for moving the selector device between said at least two positions, thereby positioning a selected component in a beam path of the first light beam as claimed.

With respect to the recitation in claim 27 that the time it takes the moving means to move the selector device between the positions is less than 500 ms (half a second), Tanaka does not teach the time it takes the spot regulating mechanism to move any two of the adjacent lenses disposed on the circular plate **10**. However, it is known in the art to use a mechanized/automated system to move a rotating wheel in an optical path within a sub-second time. Hence, at the time of the applicant's invention, one of ordinary skill in the art would have used high-speed automated system in order to rotate the circular disc of Tanaka in the beam path.

With respect to claim 128, the selected condenser lenses provide treatment energy to desired body tissue.

With respect to claims 130, the first light source is laser device as claimed.

With respect to claim 132, the selector device comprises a substantially circular disc, and the means for moving the selector device comprises a means for rotating the disc about an axis of symmetry of the disc as claimed.

With respect to claim 147, the examiner notes that the use of rotating wheel comprising a shutter mechanism is also known in the optical art.

Claims 140-142, 144-146, 148, 154, 155, 160, 161, 164-166, and 208-211 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka in view of Balle-Petersen et al. US Patent No. 6,383,177.

Tanaka, described above, does not teach the use of at least two separate light sources, a sensor for measuring parameters of the light source, a user interface, or an imaging system as claimed. Petersen et al. disclose an alternative treatment apparatus comprising: at least two light sources 102, 103; a detector system 110; a rotating mirror 101 disposed on a rotating rod 100; and at least one reflective mirror 104 adapted to direct light beams between the light sources, the detector system 110, and the rotating mirror 101 (see Fig. 4). Petersen et al. further teach that the light sources are adapted to provide treatment and diagnostic/sensing signal. They further teach the use of user interface and imaging device as claimed (see Figs. 10, 11, and 13). Hence, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Tanaka in view of Petersen et al. and use sensor system in order to monitor tissue conditions of the treatment site as well as the parameters of the treatment energy. It would have been further obvious to one of ordinary skill in the art to use a user interface and imaging mechanism during the treatment. This would give the user/surgeon information and useful parameters of the treatment site.

Allowable Subject Matter

Claim 133 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Ahmed M Farah/
Primary Examiner, Art Unit 3769

November 24, 2010.